

to effectuate its salutary purposes. It prohibits not only the introduction into interstate commerce of adulterated articles but also the delivery thereof for introduction into commerce. One is as much a violation of the Act as the other. There is a long line of cases beginning with *Dahnke-Walker Co. v. Bondurant*, 257, U. S. 282, holding that where one purchases goods in one state for transportation to another the interstate commerce transaction includes the purchase as well as the transportation.² The court sought to distinguish the *Dahnke-Walker* case on the ground that the wheat purchased by a resident of Tennessee in Kentucky for transportation to Tennessee was delivered by the vendor to the vendee on board the cars of a common carrier, to be immediately forwarded to the purchaser's mills in Tennessee. The decisions, however, make it clear that whether delivery for transportation is made to a common carrier, a private carrier, or even to the purchaser for transportation by himself is immaterial.³

"To be guilty of violating the Act, it was not necessary that appellee be engaged in interstate commerce with respect to a misbranded drug. It was sufficient if he was engaged in delivering such a drug for introduction into interstate commerce. If appellee knowingly and regularly sold misbranded drugs and delivered them, knowing that they were purchased for transportation in interstate commerce, and solicited customers to return for future purchases and deliveries, he was guilty of a violation of the Act. The allegations of the complaint for a show cause order alleged that he did all of this and for the purpose of the motion they stand admitted as true. We accordingly conclude that stated an offense and that the trial court erred in dismissing the application for a show cause order.

"The judgment is reversed and the cause is remanded with directions to proceed in conformity with the views expressed herein."

Subsequently a petition for a writ of certiorari was filed by the defendant, and on October 13, 1952, this petition was denied. Thereafter, on February 4, 1953, the case came on for hearing before the United States District Court for the Western District of Oklahoma, and upon a plea of *nolo contendere* by the defendant, the court fined him \$500.

3969. Misbranding of amphetamine sulfate tablets and pentobarbital sodium capsules. U. S. v. Irving Smith (Corner Drug Store), and Nathan Fleishman. Pleas of guilty. Each defendant placed on probation for 2 years; Defendant Smith fined \$500. (F. D. C. No. 33797. Sample Nos. 6081-L to 6083-L, incl., 6131-L, 6132-L, 6157-L, 6251-L, 6275-L.)

INFORMATION FILED: February 5, 1953, District of Massachusetts, against Irving Smith, trading as the Corner Drug Store, Boston, Mass., and Nathan Fleishman, a pharmacist.

ALLEGED VIOLATION: On or about October 25, 26, and 29, and November 5, 12, and 15, 1951, while a number of *pentobarbital sodium capsules* and *amphetamine sulfate tablets* were being held for sale at the Corner Drug Store, after shipment in interstate commerce, various quantities of the drugs were repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

Irving Smith was charged with causing the acts of repacking and dispensing alleged in each of the eight counts of the information, and Nathan Fleishman was joined as a defendant in two of the counts.

NATURE OF CHARGE: Misbranding, Sections 502 (b) (1) and (2), the repackaged drugs failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor, and an accurate statement of the quantity

² *Addyston Pipe & Steel Co. v. United States*, 175 U. S. 211; *United States v. Rock Royal Co-op*, 307 U. S. 533; *United States v. Simpson*, 252 U. S. 465; *Carter v. Carter Coal Co.*, 298 U. S. 238; *United States v. 7 Barrels, etc.*, 141 F. 2d 767.

³ *United States v. Simpson*, 252 U. S. 465; *Tobin v. Grant*, 79 F. Supp. 975.

of the contents; and, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

Further misbranding, Section 502 (d), the repackaged *pentobarbital sodium capsules* contained a chemical derivative of barbituric acid, which derivative has been found to be, and by regulations designated as, habit forming; and the repackaged capsules failed to bear a label containing the name, and quantity or proportion of such derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (e) (1), the repackaged *amphetamine sulfate tablets* failed to bear a label containing the common or usual name of the drug; and, Section 502 (f) (2), the labeling of the repackaged *amphetamine sulfate tablets* failed to bear adequate warnings against use in those pathological conditions where their use may be dangerous to health, and against unsafe dosage and methods and duration of administration, in such manner and form, as are necessary for the protection of users.

DISPOSITION: April 6, 1953. Pleas of guilty having been entered by the defendants, the court placed each defendant on probation for two years and fined Defendant Smith \$500.

3970. Misbranding of dextro-amphetamine sulfate tablets and Seconal Sodium capsules. U. S. v. Lonnie Jackson (Jackson's Drug Store). Plea of guilty. Fine, \$500. (F. D. C. No. 34358. Sample Nos. 31034-L, 34327-L, 34388-L.)

INFORMATION FILED: February 24, 1953, Western District of Missouri, against Lonnie Jackson, trading as Jackson's Drug Store, Springfield, Mo.

ALLEGED VIOLATION: On or about March 21 and 26, 1952, while a number of *dextro-amphetamine sulfate tablets* and *Seconal Sodium capsules* were being held for sale at Jackson's Drug Store, after shipment in interstate commerce, the defendant caused various quantities of the drugs to be repacked and dispensed without a physician's prescription, which acts resulted in the repackaged drugs being misbranded.

NATURE OF CHARGE: Misbranding, Section 502 (b) (2), the repackaged drugs failed to bear a label containing an accurate statement of the quantity of the contents; and, Section 502 (f) (1), the labeling of the repackaged drugs failed to bear adequate directions for use.

Further misbranding, Section 502 (b) (1), the repackaged *Seconal Sodium capsules* failed to bear a label containing the name and place of business of the manufacturer, packer, or distributor.

Further misbranding, Section 502 (d), the repackaged *Seconal Sodium capsules* contained a chemical derivative of barbituric acid, which derivative has been found to be, and by regulations designated as, habit forming; and the repackaged capsules failed to bear a label containing the name, and quantity or proportion of such derivative and in juxtaposition therewith the statement "Warning—May be habit forming."

Further misbranding, Section 502 (e) (2), the repackaged *dextro-amphetamine sulfate tablets* failed to bear a label containing the common or usual name of each active ingredient of the drug.

DISPOSITION: April 7, 1953. The defendant having entered a plea of guilty, the court fined him \$500.